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Steve Hickok, Deputy Administrator
Bonneville Power Administration
c/o Public Affairs Office – DKC-7
P.O. Box 14428
Portland, OR 97295-4428

Re: Comments on Proposed Interpretation of Section 4(c)(10)(B)
Of the Northwest Power Act

Dear Mr. Hickok,

The utilities that comprise the Western Public Agencies Group (WPAG) submit the following comments in response to the Proposed Interpretation of Section 4(c)(10)(B) of the Northwest Power Act issued by BPA on June 15, 2006. By submitting these comments, the WPAG utilities do not waive, and expressly preserve, the rights granted to them under §7(i) of the Northwest Power Act to offer rebuttal or refutation to matters included in BPA's 2007 Wholesale Power Rate Adjustment Proceeding proposal, including compliance with the statutory funding limit contained in §4(c)(10)(B) of the Northwest Power Act (Act).

These comments are limited to the question of what is the appropriate interpretation of §4(c)(10)(B) of Act, and do not offer any judgment on the appropriate level of funding for the Northwest Power and Conservation Council (Council), or its use of funding provided to it by BPA.

1. BPA's Suggested Interpretation of §4(c)(10)(B)

Under §4(c)(10)(B) of the Act, the funding that BPA can provide to the Council is limited to ". . . an amount equal to 0.10 mill multiplied by the kilowatt hours of firm power forecast to be sold by the Administrator during the year to be funded." BPA is proposing to define the statutory term "kilowatt hours of firm power forecast to be sold by the Administrator" to include residential and small farm load of regional investor owned utilities (IOUs), loads to which BPA is forecast to sell no power during the FY2007-09 rate period.

2. Comments on BPA's Suggested Interpretation

BPA is proposing this novel interpretation of this statutory term in order to fit its proposed Council funding within the statutory limit established by §4(c)(10(B) of the Act. Regardless of the good intentions that underlie this proposal, BPA's interpretation is contrary to the plain meaning of the statutory language, simple common sense, and fair treatment of its PF customers.

The plain language of the statute requires that the Council funding limit be calculated using kilowatt hours of *firm power* forecast to be sold by BPA. BPA is not forecast to sell any *firm power* to the residential and small farm loads of regional IOUs. An interpretation that includes loads to which no firm power sales are forecast to be made to calculate the Council funding limit is contrary to the plain statutory language, and the clearly stated Congressional intent.

Congress made a purposeful choice in using the term "firm power" in this statutory provision. This is demonstrated by the fact that in other operative provisions of the Act, Congress uses the term "non-firm power" to distinguish between BPA's firm and non-firm power sales. Compare, §8(d) (". . . amount of firm power the Administrator would be obliged to provide . . ."), and §7(k) (". . . sale of nonfirm electric power . . . "). The fact that Congress drew distinctions between firm and nonfirm power sales by BPA is proof it understood the nature of the limitation it was imposing on Council funding in §4(c)(10)(B), and that it did not intend the calculation of this statutory limitation could include megawatts for which money, but no firm power, is provided by BPA.

Further, at the time the Act was passed Congress knew that loads existed in the Pacific Northwest that were not served by the Administrator, or were served in part by non-firm power from BPA. See, §§5(d), 7(c)(3). Congress could have given the Administrator unfettered discretion to fund the Council, or could have chosen a different measure of the upper limit, but Congress did not do so. BPA's proposed interpretation of §4(c)(10)(B) ignores these facts, and is contrary to the clear Congressional direction set out in §4(c)(10)(B).

BPA argues that since the Act describes the monetary benefits provided to the IOU residential and small farm customers under §5(c) as the purchase and sale of power, it is appropriate to include such loads in the calculation of the Council funding limit. Whether this argument has merit is beside the point, since none of the IOU residential and small farm load is receiving benefits under the §5(c) residential exchange benefit program, nor is any portion of that load forecast to do so. Even BPA has not described the provision of monetary benefits to the IOUs under the settlement agreements as an exchange of power.

Rather, this load is receiving monetary payments under settlement agreements with BPA, and the simple fact is that the payment of monetary benefits to a load under a settlement agreement does not constitute the sale of firm power to such load. To treat such load as receiving firm power from BPA is to deny reality.

BPA also asserts that failing to include the loads of IOU residential and small farm customers in the calculation of the Council funding limit will frustrate the statutory scheme envisioned by Congress. Put another way, BPA argues that the very clear language set forth in §4(c)(10)(B) of the Act may be overridden when it determines that some unstated statutory scheme will be frustrated. The rules of statutory interpretation require that BPA reconcile statutory provisions, rather than creating conflict between statutory provisions in order to override clear statutory directives. In fact, no such conflict exists, and the assertion of its existence provides no justification for adopting a policy that disregards the clear language of §4(c)(10)(B) of the Act.

Lastly, it should be noted that this proposed policy has been subjected to a highly abbreviated comment period (10 days from receipt of notice to comment deadline) that appears to be designed to provide a *post facto* policy justification for the Council funding level contained in BPA's 2007 Wholesale Power Rate Adjustment Proceeding rate proposal first released on November 8, 2005. This is a dubious use of the policy setting process.

3. <u>Conclusion</u>

While BPA seeks to advance a laudable policy goal of providing funding that it considers adequate for the Council, it has chosen to do so in a manner that disregards the clearly stated Congressional direction contained in §4(c)(10)(B) of the Act. Neither BPA nor its customers will be benefited in the long run by BPA achieving policy goals by adopting policies that are based on novel statutory interpretations that require express statutory provisions of the Act to be ignored.

A better approach to resolving this funding dilemma would be to either seek a revision to the statutory limit, or seek funding for the Council's activities from sources other than BPA. This is a choice that many institutions carrying on important societal work have confronted and overcome. These approaches offer a better resolution for the Council, BPA, and the region.

Yours truly,

/S/ Terence L. Mundorf

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